
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1645

State of Washington

64th Legislature

2015 Regular Session

By House Appropriations (originally sponsored by Representatives Pollet, Harris, Carlyle, Cody, Johnson, Tharinger, Robinson, Lytton, Kagi, Ryu, S. Hunt, Farrell, Moscoso, Riccelli, McBride, and Jinkins; by request of Governor Inslee and Attorney General)

READ FIRST TIME 04/07/15.

1 AN ACT Relating to youth substance use prevention associated with
2 tobacco and drug delivery e-cigarettes and vapor products; amending
3 RCW 26.28.080, 28A.210.310, 70.155.010, 70.155.020, 70.155.030,
4 70.155.050, 70.155.070, 70.155.140, 70.155.080, 70.155.090,
5 70.155.100, 70.155.110, 70.155.120, 70.155.130, 82.24.530, and
6 82.26.170; adding new sections to chapter 70.155 RCW; creating new
7 sections; prescribing penalties; and providing an effective date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
10 availability and use of nicotine vapor inhalation products, such as
11 e-cigarettes, e-devices, and vape pens, have increased dramatically
12 in recent years, and that the use of such products has become
13 commonplace in this state on the part of both adults and youth. The
14 low cost of e-cigarettes and nicotine liquids for vapor products, as
15 compared to cigarettes, is a key factor with respect to the
16 popularity of such products. Despite the increasing popularity of
17 vapor products and the resultant rapid expansion of the vapor
18 products market, commerce in such products is wholly unregulated at
19 the state level and is not subject to the legal requirements
20 regarding youth access, public health disclosures, licensing, or

1 taxation, applicable to commerce in cigarettes and other tobacco
2 products.

3 (2) The potential public health risks posed by vapor products are
4 many-faceted, and include nicotine addiction, liquid nicotine
5 poisoning, the potential inhalation of carcinogens and toxic
6 substances, and the adverse effects of nicotine on adolescent brain
7 development. When exposed to heat, the nicotine solutions used in
8 vapor products can generate a range of chemical byproducts that may
9 have adverse health consequences when inhaled. The specific chemistry
10 of the liquid nicotine solutions used in vapor products is not
11 standardized and neither manufacturers nor retailers are required to
12 disclose the chemical contents of the solutions. Consumers,
13 therefore, have no way of determining exactly what substances they
14 are inhaling or what the health consequences of such inhalation might
15 be.

16 (3) When absorbed through the skin liquid nicotine may be toxic
17 to both adults and children. In Washington, poison center calls
18 related to vapor products have increased from two in 2010 to one
19 hundred forty-four in the first nine months of 2014, ninety-seven of
20 which involved children. Of the calls involving children, eighty-four
21 percent were one to three years old. However, due to the current lack
22 of regulation, vapor product manufacturers, distributors, and
23 retailers are not subject to labeling and advertising requirements or
24 other regulations designed to provide consumers with product safety
25 warnings or other health-related information.

26 (4) The current easy access to vapor products is particularly
27 problematic with respect to teenagers. A study conducted by the
28 Centers for Disease Control and Prevention (CDC) reported that in
29 2013 more than a quarter of a million youth who had never smoked a
30 cigarette had used vapor products. The CDC also noted that in 2011
31 this number was seventy-nine thousand, which increased to more than
32 two hundred sixty-three thousand in 2013, thus reflecting a more than
33 threefold increase in the number of youth using vapor products during
34 this three-year period. Such statistics underscore the urgent need
35 for the creation of a comprehensive regulatory framework governing
36 commerce in vapor products, especially with respect to restricting
37 access to such products by children and teenagers.

38 (5) It is well-understood that the ability to make rational
39 decisions regarding risky behaviors such as smoking cigarettes and
40 drinking alcohol is less developed in teenagers as compared to

1 adults, and our legal system has traditionally responded by
2 protecting teenagers from such risks through the restriction or
3 prohibition of teen involvement in such activities. As is the case
4 with commerce in cigarettes and alcohol, the vapor products market
5 requires regulatory oversight that focuses upon preventing children
6 and teenagers from accessing and using products that can cause
7 addiction and other adverse health consequences.

8 (6) In order to ensure that youth access to vapor products is
9 subject to comprehensive regulatory controls, it is imperative that
10 the statutory framework for the regulation of vapor products includes
11 a prohibition on the shipment or transportation of vapor products
12 purchased at retail through the internet. Simply requiring motor
13 carrier delivery companies to verify the age of the customer at the
14 time of delivery is not an option, insofar as the United States
15 supreme court has ruled that such state-imposed age verification
16 procedures are preempted by federal laws regulating the services that
17 may be provided by motor carriers. Furthermore, allowing consumers to
18 make vapor products purchases via the internet would make it all but
19 impossible to ensure that vapor products purchased by state residents
20 meet state legal standards regarding child-resistant packaging and
21 public health disclosure requirements. Accordingly, a complete ban on
22 internet sales is the least restrictive, and most practical, means of
23 preventing minors from making illegal purchases and ensuring that
24 vapor products meet state packaging and product disclosure standards.

25 (7) Although it is clear that commerce in vapor products should
26 be subject to stringent regulatory controls, the development of a
27 regulatory framework must be tempered by an awareness of the
28 potential for creating an illegal black market in vapor products. If
29 regulatory measures related to licensing and taxation unduly restrict
30 the development of the market, and thus cause extreme increases in
31 retail prices, then the stage will be set for the emergence of a
32 black market similar to that experienced by the cigarette industry.

33 (8) The legislature finds, therefore, that this act is necessary
34 to protect the public health, safety, and welfare by preventing youth
35 from having access to addictive vapor products, ensuring that
36 consumers have accurate information about potentially dangerous
37 products, and protecting the public from nicotine poisoning.

38 **Sec. 2.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read
39 as follows:

1 (1) (~~Every~~) A person who sells or gives, or permits to be sold
2 or given, to (~~any~~) a person under the age of eighteen years any
3 cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or
4 a vapor product is guilty of a gross misdemeanor.

5 (2) It (~~shall be no~~) is not a defense to a prosecution for a
6 violation of this section that the person acted, or was believed by
7 the defendant to act, as agent or representative of another.

8 (3) For the purposes of this section, "vapor product" (~~means a~~
9 ~~noncombustible tobacco derived product containing nicotine that~~
10 ~~employs a mechanical heating element, battery, or circuit, regardless~~
11 ~~of shape or size, that can be used to heat a liquid nicotine solution~~
12 ~~contained in cartridges. Vapor product does not include any product~~
13 ~~that is regulated by the United States food and drug administration~~
14 ~~under chapter V of the federal food, drug, and cosmetic act~~) has the
15 same meaning as provided in RCW 70.155.010.

16 **Sec. 3.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to
17 read as follows:

18 (1) To protect children in the public schools of this state from
19 exposure to the addictive substance of nicotine, each school district
20 board of directors (~~shall~~) must have a written policy mandating a
21 prohibition on the use of all tobacco products and vapor products on
22 public school property, in school-owned and other approved vehicles
23 used to transport students to and from school or school activities,
24 and at school-sponsored or school-approved activities.

25 (2) The policy in subsection (1) of this section (~~shall~~) must
26 include, but not be limited to, a requirement that students and
27 school personnel be notified of the prohibition, the posting of signs
28 prohibiting the use of tobacco products and vapor products, sanctions
29 for students and school personnel who violate the policy, and a
30 requirement that school district personnel enforce the prohibition.
31 Enforcement policies adopted in the school board policy (~~shall be~~)
32 are in addition to the enforcement provisions in RCW 70.160.070.

33 (3) For purposes of this section, "vapor product" means any: (a)
34 Device that employs a battery or other mechanism to heat a solution
35 or substance to produce a vapor or aerosol intended for inhalation;
36 (b) cartridge or container of a solution or substance intended to be
37 used with or in such a device or to refill such a device; or (c)
38 solution or substance intended for use in such a device, including,
39 but not limited to, concentrated nicotine. "Vapor product" includes

1 any electronic cigarettes, electronic nicotine delivery systems,
2 electronic cigars, electronic cigarillos, electronic pipes, vape
3 pens, or similar products or devices, as well as any parts that can
4 be used to build such products or devices. "Vapor product" does not
5 include any drug, device, or combination product approved for sale by
6 the United States food and drug administration that is marketed and
7 sold for such approved purpose.

8 **Sec. 4.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to
9 read as follows:

10 The definitions ~~((set forth))~~ in this section and RCW 82.24.010
11 ~~((shall apply to this chapter. In addition, for the purposes of this~~
12 ~~chapter, unless otherwise required by the context:))~~ apply throughout
13 this chapter unless the context clearly requires otherwise.

14 (1) "Board" means the Washington state liquor ~~((control))~~ and
15 cannabis board.

16 (2) "Concentrated nicotine" means any solution or substance with
17 a nicotine concentration greater than ten milligrams per milliliter.

18 (3) "Department" means the department of health.

19 (4) "Distributor" means: (a) Any person who sells vapor products
20 to persons other than ultimate consumers; or (b) any person who meets
21 the definition of distributor under RCW 82.26.010.

22 (5) "Internet" means any computer network, telephonic network, or
23 other electronic network.

24 ~~((+3))~~ (6) "Manufacturer" means any person, including but not
25 limited to a repacker or relabeler, who manufactures, fabricates,
26 assembles, processes, or labels a vapor product or who imports a
27 finished vapor product for sale or distribution into the United
28 States.

29 (7) "Minor" refers to an individual who is less than eighteen
30 years old.

31 ~~((+4))~~ (8) "Packaging" means a pack, box, carton, wrapping, or
32 container of any kind in which a vapor product is sold or offered for
33 sale to a consumer.

34 (9) "Person" means any natural person, partnership, firm, joint
35 stock company, corporation, or other legal entity, including an
36 employee of any such entity.

37 (10) "Retailer" means any person engaged in the business of
38 selling tobacco products or vapor products to ultimate consumers.

1 (11) "Sale" means any transfer, exchange, or barter, in any
2 manner or by any means, for consideration, and includes all sales
3 made by any person. "Sale" includes a gift by a person engaged in the
4 business of selling tobacco products or vapor products for
5 advertising, promoting, or as a means of evading the provisions of
6 this chapter.

7 (12) "Sample" means a tobacco product distributed to members of
8 the general public at no cost or at nominal cost for product
9 promotion purposes.

10 ~~((+5))~~ (13) "Sampling" means the distribution of samples to
11 members of the public.

12 ~~((+6))~~ (14) "Tobacco product" means a product that contains
13 tobacco and is intended for human use, including ~~((any product))~~
14 "cigarettes" defined in RCW 82.24.010~~((+2))~~ or "tobacco products"
15 defined in RCW 82.26.010~~((+1))~~, except that for the purposes of RCW
16 70.155.140 only, "tobacco product" does not include cigars defined in
17 RCW 82.26.010 as to which one thousand units weigh more than three
18 pounds.

19 (15) "Vapor product" means any: (a) Device that employs a battery
20 or other mechanism to heat a solution or substance to produce a vapor
21 or aerosol intended for inhalation; (b) cartridge or container of a
22 solution or substance intended to be used with or in such a device or
23 to refill such a device; or (c) solution or substance intended for
24 use in such a device, including, but not limited to, concentrated
25 nicotine. "Vapor product" includes any electronic cigarettes,
26 electronic nicotine delivery systems, electronic cigars, electronic
27 cigarillos, electronic pipes, vape pens, or similar products or
28 devices, as well as any parts that can be used to build such products
29 or devices. "Vapor product" does not include any drug, device, or
30 combination product approved for sale by the United States food and
31 drug administration that is marketed and sold for such approved
32 purpose.

33 **Sec. 5.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to
34 read as follows:

35 A person who holds a license issued under RCW ~~((82.24.520 or~~
36 ~~82.24.530 shall))~~ 82.24.510, 82.26.150, or section 23 of this act
37 must:

38 (1) Display the license or a copy in a prominent location at the
39 outlet for which the license is issued; and

1 (2)(a) Display a sign concerning the prohibition of tobacco
2 product and vapor product sales to minors.

3 (b) Such sign (~~shall~~) must:

4 (~~a~~) (i) Be posted so that it is clearly visible to anyone
5 purchasing tobacco products or vapor products from the licensee;

6 (~~b~~) (ii) Be designed and produced by the department of health
7 to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS
8 UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER
9 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR A
10 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

11 (~~c~~) (iii) Be provided free of charge by the (~~liquor~~
12 ~~control~~) board.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.155
14 RCW to read as follows:

15 A person who holds a license issued under chapter 82.24 or 82.26
16 RCW or section 23 of this act must conduct the business and maintain
17 the premises in compliance with Titles 9 and 9A RCW and chapter 69.50
18 RCW.

19 **Sec. 7.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to
20 read as follows:

21 Unless preempted by federal law, no person (~~shall~~) may sell or
22 permit to be sold any tobacco product or vapor product through any
23 device that mechanically dispenses tobacco products or vapor products
24 unless the device is located fully within premises from which minors
25 are prohibited or in industrial worksites where minors are not
26 employed and not less than ten feet from all entrance or exit ways to
27 and from each premises. The board (~~shall~~) must adopt rules that
28 allow an exception to the requirement that a device be located not
29 less than ten feet from all entrance or exit ways to and from a
30 premises if it is architecturally impractical for the device to be
31 located not less than ten feet from all entrance and exit ways.

32 **Sec. 8.** RCW 70.155.050 and 2006 c 14 s 3 are each amended to
33 read as follows:

34 (1) Unless preempted by federal law, no person may engage in the
35 business of sampling tobacco products or vapor products.

36 (2) (~~A violation of this section is a misdemeanor.~~) No person
37 may offer a tasting of vapor products to the general public unless:

1 (a) The person is a licensed retailer under section 23 of this
2 act;

3 (b) The tastings are offered only within the licensed premises
4 operated by the licensee and the products tasted are not removed from
5 within the licensed premises by the customer; and

6 (c) Entry into the licensed premises is restricted to persons
7 eighteen years of age or older.

8 (3) A violation of this section is a misdemeanor.

9 **Sec. 9.** RCW 70.155.070 and 1993 c 507 s 8 are each amended to
10 read as follows:

11 No person (~~shall~~) may give or distribute vapor products,
12 cigarettes, or other tobacco products to a person by a coupon if such
13 coupon is redeemed in any manner that does not require an in-person
14 transaction in a retail store.

15 **Sec. 10.** RCW 70.155.140 and 2009 c 278 s 2 are each amended to
16 read as follows:

17 (1) A person may not:

18 (a) Ship or transport, or cause to be shipped or transported, any
19 tobacco product or vapor product ordered or purchased by mail or
20 through the internet to anyone in this state other than a licensed
21 wholesaler, distributor, or retailer; or

22 (b) With knowledge or reason to know of the violation, provide
23 substantial assistance to a person who is in violation of this
24 section.

25 (2) This section does not prohibit shipping, selling, or
26 transporting, or causing to be sold, shipped, or transported,
27 concentrated nicotine ordered or purchased by mail or through the
28 internet to a person who:

29 (a) Is engaged in business in this state;

30 (b) Has a documented commercial or industrial need for
31 concentrated nicotine that is not related to the sale, distribution,
32 or manufacture of vapor products; and

33 (c) Receives a waiver from the board.

34 (3)(a) A person who knowingly violates subsection (1) of this
35 section is guilty of a class C felony, except that the maximum fine
36 that may be imposed is five thousand dollars.

37 (b) In addition to or in lieu of any other civil or criminal
38 remedy provided by law, a person who has violated subsection (1) of

1 this section is subject to a civil penalty of up to five thousand
2 dollars for each violation. The attorney general, acting in the name
3 of the state, may seek recovery of the penalty in a civil action in
4 superior court. For purposes of this subsection, each shipment or
5 transport of tobacco products or vapor products constitutes a
6 separate violation.

7 ~~((3))~~ (4) The attorney general may seek an injunction in
8 superior court to restrain a threatened or actual violation of
9 subsection (1) of this section and to compel compliance with
10 subsection (1) of this section.

11 ~~((4))~~ (5) Any violation of subsection (1) of this section is
12 not reasonable in relation to the development and preservation of
13 business and is an unfair and deceptive act or practice and an unfair
14 method of competition in the conduct of trade or commerce in
15 violation of RCW 19.86.020. Standing to bring an action to enforce
16 RCW 19.86.020 for violation of subsection (1) of this section lies
17 solely with the attorney general. Remedies provided by chapter 19.86
18 RCW are cumulative and not exclusive.

19 ~~((5))~~ (6)(a) In any action brought under this section, the
20 state is entitled to recover, in addition to other relief, the costs
21 of investigation, expert witness fees, costs of the action, and
22 reasonable attorneys' fees.

23 (b) If a court determines that a person has violated subsection
24 (1) of this section, the court ~~((shall))~~ must order any profits,
25 gain, gross receipts, or other benefit from the violation to be
26 disgorged and paid to the state treasurer for deposit in the general
27 fund.

28 ~~((6))~~ (7) Unless otherwise expressly provided, the penalties or
29 remedies, or both, under this section are in addition to any other
30 penalties and remedies available under any other law of this state.

31 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.155
32 RCW to read as follows:

33 (1) The packaging for a vapor product must have a label
34 disclosing the amount of nicotine in milligrams per milliliter of
35 liquid along with the total volume of the liquid contents of the
36 product in milliliters. The manufacturer and the distributor of a
37 vapor product are each responsible for such labeling and may not
38 market, distribute, or offer for sale a vapor product that does not
39 meet this labeling requirement. The board must specify by rule the

1 uniform testing methodology that must be used by manufacturers and
2 distributors in determining the nicotine content of a vapor product
3 for the purposes of this required disclosure. If the federal
4 government adopts or requires a different testing methodology or
5 standard, the federal methodology or standard preempts board rules
6 adopted under this subsection (1). The board and the department may
7 utilize revenues derived from licensing fees to conduct vapor product
8 testing in order to verify the accuracy of a nicotine content
9 disclosure. The board must adopt rules regarding the penalties to be
10 imposed upon a manufacturer or distributor for a violation of this
11 subsection (1).

12 (2) In addition to the labeling required under subsection (1) of
13 this section, and subject to the provisions of this section, the
14 board, in consultation with the department, must adopt rules
15 regarding vapor product labeling and advertising disclosure
16 requirements. These rules must address requirements regarding product
17 health and safety warnings and the disclosure of the ingredients
18 contained in vapor products that are advertised or offered for sale
19 in this state.

20 (3) Prior to the adoption of the rules required under this
21 section, the board and the department must jointly conduct a study
22 that includes:

23 (a) The identification of the chemicals and substances commonly
24 found in the liquids contained in vapor products;

25 (b) The identification of the chemicals and substances contained
26 in the vapors or aerosols emitted from vapor products;

27 (c) The determination of whether any of the chemicals or
28 substances contained within, or emitted from, vapor products contain
29 toxins or carcinogens, or otherwise pose a risk to public health and
30 safety; and

31 (d) Any other matter relating to potential health risks posed by
32 the use of vapor products, as determined by the board and the
33 department.

34 (4) In conducting the study, the board and the department must
35 consult with the following:

36 (a) Scientists, physicians, researchers, academics, or other
37 professionals with expertise relevant to the understanding of the
38 design, operation, and/or health effects of vapor products;

39 (b) Public health professionals and organizations;

40 (c) Vapor product manufacturers, distributors, and/or retailers;

1 (d) Governmental representatives; and

2 (e) Other individuals or entities with relevant expertise, as
3 determined by the board and the department.

4 (5) Upon completion of the study, and prior to the adoption of
5 the rules authorized under this section, the board must prepare a
6 written report regarding the results of the study and containing
7 findings and recommendations regarding vapor product labeling and
8 advertising requirements. The report must be submitted to the
9 governor and the appropriate committees of the legislature not later
10 than December 1, 2016.

11 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.155
12 RCW to read as follows:

13 (1) Unless preempted by federal law, the board is authorized to
14 promulgate rules regulating the chemical composition of the liquids
15 contained in vapor products, including substances included for
16 flavoring purposes. In developing such rules the board must consult
17 with the department.

18 (2) Upon request by the board or the department, either the
19 manufacture or the distributor of a vapor product must provide the
20 board with a list of all substances, and their relative proportions,
21 contained in the liquid contents of the product.

22 (3) The board may prohibit the sale of vapor products that
23 contain or emit chemicals or substances, other than nicotine, that
24 pose a substantial threat to public health and safety.

25 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.155
26 RCW to read as follows:

27 (1) No person may offer a tobacco product or a vapor product for
28 sale in an open, unsecured display that is accessible to the public
29 without the intervention of a store employee.

30 (2) This section does not apply to a person licensed under RCW
31 82.24.520, 82.24.530, 82.26.160, 82.26.170, or section 23 of this act
32 if access to the licensed premises is restricted to individuals who
33 are eighteen years of age or older.

34 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.155
35 RCW to read as follows:

36 (1) Unless preempted by federal law, any substance intended for
37 use in a vapor product that is sold at retail in this state must

1 satisfy the child-resistant effectiveness standards under 16 C.F.R.
2 Sec. 1700, the poison prevention packaging act, as it existed on the
3 effective date of this section, or such subsequent date as may be
4 provided by the board by rule, consistent with the purposes of this
5 section.

6 (2) A substance contained in a cartridge sold, marketed, or
7 intended for use in a vapor product that is prefilled and sealed by
8 the manufacturer, and not intended to be opened by the consumer, is
9 exempt from subsection (1) of this section.

10 (3) A manufacturer that knowingly sells or distributes a
11 substance intended for use in a vapor product that does not satisfy
12 the requirements of this section is guilty of a class C felony.

13 (4) The provisions of this section are null and void and of no
14 force and effect, upon the effective date of final regulations issued
15 by the United States food and drug administration or from any other
16 federal agency, where such regulations mandate child-resistant
17 effectiveness standards for liquid nicotine containers.

18 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.155
19 RCW to read as follows:

20 A person may not sell, offer for sale, or possess with intent to
21 sell or offer for sale any vapor product within the state that
22 contains a substance that increases the absorption of nicotine as
23 determined by the board in consultation with the department.

24 **Sec. 16.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to
25 read as follows:

26 (1) A person under the age of eighteen who purchases or attempts
27 to purchase, possesses, or obtains or attempts to obtain cigarettes
28 (~~((~~or~~))~~), tobacco products, or vapor products commits a class 3 civil
29 infraction under chapter 7.80 RCW and is subject to a fine as set out
30 in chapter 7.80 RCW or participation in up to four hours of community
31 restitution, or both. The court may also require participation in a
32 (~~((~~smoking~~))~~) cessation program. This provision does not apply if a
33 person under the age of eighteen, with parental authorization, is
34 participating in a controlled purchase as part of a (~~((~~liquor~~~~
35 ~~control~~)) board, law enforcement, or local health department
36 activity.

37 (2) Municipal and district courts within the state have
38 jurisdiction for enforcement of this section.

1 **Sec. 17.** RCW 70.155.090 and 2006 c 14 s 4 are each amended to
2 read as follows:

3 (1) Where there may be a question of a person's right to purchase
4 or obtain tobacco products or vapor products by reason of age, the
5 retailer or agent thereof(~~(, shall)~~) must require the purchaser to
6 present any one of the following officially issued identification
7 that shows the purchaser's age and bears his or her signature and
8 photograph: (a) (~~(Liquor control authority card of identification of~~
9 ~~a state or province of Canada; (b))~~) Driver's license, instruction
10 permit, or identification card of a state or province of Canada;
11 ~~((e))~~ (b) "identocard" issued by the Washington state department of
12 licensing under chapter 46.20 RCW; ((d)) (c) United States military
13 identification; ((e)) (d) passport; ((f)) (e) enrollment card,
14 issued by the governing authority of a federally recognized Indian
15 tribe located in Washington, that incorporates security features
16 comparable to those implemented by the department of licensing for
17 Washington drivers' licenses. At least ninety days prior to
18 implementation of an enrollment card under this subsection, the
19 appropriate tribal authority ((shall)) must give notice to the board.
20 The board ((shall)) must publish and communicate to licensees
21 regarding the implementation of each new enrollment card; or ((g))
22 (f) merchant marine identification card issued by the United States
23 coast guard.

24 (2) It is a defense to a prosecution under RCW 26.28.080 that the
25 person making a sale reasonably relied on any of the officially
26 issued identification as defined in subsection (1) of this section.
27 The (~~(liquor control)~~) board (~~(shall)~~) must waive the suspension or
28 revocation of a license if the licensee clearly establishes that he
29 or she acted in good faith to prevent violations and a violation
30 occurred despite the licensee's exercise of due diligence.

31 **Sec. 18.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to
32 read as follows:

33 (1) The (~~(liquor control)~~) board may suspend or revoke a
34 retailer's license issued under RCW 82.24.510(1)(b), 82.26.150(1)(b),
35 or section 23(1)(b) of this act held by a business at any location,
36 or may impose a monetary penalty as set forth in subsection (2) of
37 this section, if the (~~(liquor control)~~) board finds that the licensee
38 has violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~
39 ~~70.155.050, 70.155.070, or 70.155.090))~~) through 70.155.070,

1 70.155.090, sections 6 and 12 through 15 of this act, or 21 C.F.R.
2 Sec. 1140.14 as it exists on the effective date of this section.

3 (2) The sanctions that the (~~liquor control~~) board may impose
4 against a person licensed under RCW (~~82.24.530~~) 82.24.510(1)(b),
5 82.26.150(1)(b), or section 23(1)(b) of this act based upon one or
6 more findings under subsection (1) of this section may not exceed the
7 following:

8 (a) For violations of RCW 26.28.080 (~~09~~), 70.155.020, sections
9 12, 14, and 15 of this act, or 21 C.F.R. Sec. 1140.14, and for
10 violations of RCW 70.155.040 occurring on the licensed premises:

11 (i) A monetary penalty of (~~one~~) two hundred dollars for the
12 first violation within any (~~two~~) three-year period;

13 (ii) A monetary penalty of (~~three~~) six hundred dollars for the
14 second violation within any (~~two~~) three-year period;

15 (iii) A monetary penalty of (~~one~~) two thousand dollars and
16 suspension of the license for a period of six months for the third
17 violation within any (~~two~~) three-year period;

18 (iv) A monetary penalty of (~~one~~) three thousand (~~five~~
19 ~~hundred~~) dollars and suspension of the license for a period of
20 twelve months for the fourth violation within any (~~two~~) three-year
21 period;

22 (v) Revocation of the license with no possibility of
23 reinstatement for a period of five years for the fifth or more
24 violation within any (~~two~~) three-year period;

25 (b) For violations of section 6 of this act, suspension or
26 revocation of the license;

27 (c) For violations of RCW 70.155.030, a monetary penalty in the
28 amount of (~~one~~) two hundred dollars for each day upon which such
29 violation occurred;

30 (~~(c) For violations of RCW 70.155.040 occurring on the licensed~~
31 ~~premises:~~

32 (~~(i) A monetary penalty of one hundred dollars for the first~~
33 ~~violation within any two-year period;~~

34 (~~(ii) A monetary penalty of three hundred dollars for the second~~
35 ~~violation within any two-year period;~~

36 (~~(iii) A monetary penalty of one thousand dollars and suspension~~
37 ~~of the license for a period of six months for the third violation~~
38 ~~within any two-year period;~~

1 ~~(iv) A monetary penalty of one thousand five hundred dollars and~~
2 ~~suspension of the license for a period of twelve months for the~~
3 ~~fourth violation within any two-year period;~~

4 ~~(v) Revocation of the license with no possibility of~~
5 ~~reinstatement for a period of five years for the fifth or more~~
6 ~~violation within any two-year period;))~~

7 (d) For violations of RCW 70.155.050 or section 13 of this act, a
8 monetary penalty in the amount of ~~((three))~~ six hundred dollars for
9 each violation;

10 (e) For violations of RCW 70.155.070, a monetary penalty in the
11 amount of ~~((one))~~ two thousand dollars for each violation.

12 (3) The ~~((liquor control))~~ board may impose a monetary penalty
13 upon any person other than a licensed cigarette, tobacco product, or
14 vapor product retailer if the ~~((liquor control))~~ board finds that the
15 person has violated RCW 26.28.080, 70.155.020~~((, 70.155.030,~~
16 ~~70.155.040, 70.155.050, 70.155.070, or 70.155.090))~~ through
17 70.155.070, 70.155.090, or sections 12 through 15 of this act.

18 (4) The monetary penalty that the ~~((liquor control))~~ board may
19 impose based upon one or more findings under subsection (3) of this
20 section may not exceed the following:

21 (a) For violations of RCW 26.28.080 ~~((or 70.155.020, fifty))~~,
22 70.155.020, or sections 12, 14, and 15 of this act, one hundred
23 dollars for the first violation and ~~((one))~~ two hundred dollars for
24 each subsequent violation;

25 (b) For violations of RCW 70.155.030, ~~((one))~~ two hundred dollars
26 for each day upon which such violation occurred;

27 (c) For violations of RCW 70.155.040, ~~((one))~~ two hundred dollars
28 for each violation;

29 (d) For violations of RCW 70.155.050 or section 13 of this act,
30 ~~((three))~~ six hundred dollars for each violation;

31 (e) For violations of RCW 70.155.070, ~~((one))~~ two thousand
32 dollars for each violation.

33 (5) The ~~((liquor control))~~ board may develop and offer a class
34 for retail clerks and use this class in lieu of a monetary penalty
35 for the clerk's first violation.

36 (6) The ~~((liquor control))~~ board may issue a cease and desist
37 order to any person who is found by the ~~((liquor control))~~ board to
38 have violated or intending to violate the provisions of this chapter,
39 RCW 26.28.080 ~~((or))~~, 82.24.500, 82.26.190, or section 23 of this
40 act, requiring such person to cease specified conduct that is in

1 violation. The issuance of a cease and desist order (~~shall~~) does
2 not preclude the imposition of other sanctions authorized by this
3 statute or any other provision of law.

4 (7) The (~~liquor control~~) board may seek injunctive relief to
5 enforce the provisions of RCW 26.28.080 (~~or~~), 82.24.500, 82.26.190,
6 section 23 of this act, or this chapter. The (~~liquor control~~) board
7 may initiate legal action to collect civil penalties imposed under
8 this chapter if the same have not been paid within thirty days after
9 imposition of such penalties. In any action filed by the (~~liquor~~
10 ~~control~~) board under this chapter, the court may, in addition to any
11 other relief, award the (~~liquor control~~) board reasonable
12 attorneys' fees and costs.

13 (8) All proceedings under subsections (1) through (6) of this
14 section (~~shall~~) must be conducted in accordance with chapter 34.05
15 RCW.

16 (9) The (~~liquor control~~) board may reduce or waive either the
17 penalties or the suspension or revocation of a license, or both, as
18 set forth in this chapter where the elements of proof are inadequate
19 or where there are mitigating circumstances. Mitigating circumstances
20 may include, but are not limited to, an exercise of due diligence by
21 a retailer. Further, the board may exceed penalties set forth in this
22 chapter based on aggravating circumstances.

23 **Sec. 19.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
24 read as follows:

25 (1) The (~~liquor control~~) board (~~shall~~) must, in addition to
26 the board's other powers and authorities, have the authority to
27 enforce the provisions of this chapter and RCW 26.28.080(~~(4) and~~),
28 82.24.500, 82.26.190, and section 23 of this act. The (~~liquor~~
29 ~~control~~) board (~~shall have~~) has full power to revoke or suspend
30 the license of any retailer (~~or~~), distributor, or wholesaler in
31 accordance with the provisions of RCW 70.155.100.

32 (2) The (~~liquor control~~) board and the board's (~~authorized~~
33 ~~agents~~) enforcement officers or employees (~~shall~~) have full power
34 and authority to enter any place of business where tobacco products
35 or vapor products are sold for the purpose of enforcing the
36 provisions of this chapter.

37 (3) For the purpose of enforcing the provisions of this chapter
38 and RCW 26.28.080(~~(4) and~~), 82.24.500, 82.26.190, and section 23 of
39 this act, a peace officer or enforcement officer of the (~~liquor~~

1 ~~control~~) board who has reasonable grounds to believe a person
2 observed by the officer purchasing, attempting to purchase, or in
3 possession of tobacco products or vapor products is under the age of
4 eighteen years of age, may detain such person for a reasonable period
5 of time and in such a reasonable manner as is necessary to determine
6 the person's true identity and date of birth. Further, tobacco
7 products or vapor products possessed by persons under the age of
8 eighteen years of age are considered contraband and may be seized by
9 a peace officer or enforcement officer of the (~~liquor control~~)
10 board.

11 (4) The (~~liquor control~~) board may work with local county
12 health departments or districts and local law enforcement agencies to
13 conduct random, unannounced(~~(r)~~) inspections to assure compliance.

14 **Sec. 20.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to
15 read as follows:

16 (1) The youth tobacco and vapor products prevention account is
17 created in the state treasury. All fees collected pursuant to RCW
18 82.24.520 (~~and~~), 82.24.530, 82.26.160, 82.26.170, section 23 of
19 this act, and section 24 of this act and funds collected by the
20 (~~liquor control~~) board from the imposition of monetary penalties
21 (~~and samplers' fees shall~~) under this chapter must be deposited
22 into this account, except that ten percent of all such fees and
23 penalties (~~shall~~) must be deposited in the state general fund.

24 (2) Moneys appropriated from the youth tobacco and vapor products
25 prevention account to the department (~~of health shall~~) must be used
26 by the department (~~of health~~) for implementation of this chapter,
27 including collection and reporting of data regarding enforcement and
28 the extent to which access to tobacco products and vapor products by
29 youth has been reduced.

30 (3) The department (~~of health shall~~) must enter into
31 interagency agreements with the (~~liquor control~~) board to pay the
32 costs incurred, up to thirty percent of available funds, in carrying
33 out its cigarette, tobacco product, and vapor product enforcement
34 responsibilities under this chapter and chapters 82.24 and 82.26 RCW.
35 Such agreements (~~shall~~) must set forth standards of enforcement,
36 consistent with the funding available, so as to reduce the extent to
37 which tobacco products and vapor products are available to
38 individuals under the age of eighteen. The agreements (~~shall~~) must

1 also set forth requirements for data reporting by the (~~liquor~~
2 ~~control~~) board regarding its enforcement activities.

3 (4) The department (~~of health~~), the board, and the department
4 of revenue (~~shall~~) must enter into an interagency agreement for
5 payment of the cost of administering the tobacco (~~retailer~~) and
6 vapor product licensing system and for the provision of quarterly
7 documentation of tobacco and vapor product wholesaler, retailer, and
8 vending machine names and locations.

9 (5) The department (~~of health shall~~) must, within up to seventy
10 percent of available funds, provide grants to local health
11 departments or other local community agencies to develop and
12 implement coordinated tobacco and vapor product intervention
13 strategies to prevent and reduce (~~tobacco~~) use by youth.

14 (6) Three percent of available funds must be provided to public
15 institutions of higher education with postgraduate schools of public
16 health and accredited by the council on education for public health,
17 for the purpose of supporting research and graduate fellowships
18 pertaining to prevention, education, and health effects related to
19 the use of nicotine and vapor products by youth and adults.

20 (7) Funds from the account created under this section may be used
21 by the board and department to conduct vapor product content testing
22 authorized under section 11 of this act.

23 **Sec. 21.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to
24 read as follows:

25 (1) This chapter preempts political subdivisions from adopting or
26 enforcing requirements for the licensure and regulation of tobacco
27 product promotions and sales within retail stores, except that
28 political subdivisions that have adopted ordinances prohibiting
29 sampling by January 1, 1993, may continue to enforce these
30 ordinances. No political subdivision may:

31 (~~(1)~~) (a) Impose fees or license requirements on retail
32 businesses for possessing or selling cigarettes or tobacco products,
33 other than general business taxes or license fees not primarily
34 levied on tobacco products; or

35 (~~(2)~~) (b) Regulate or prohibit activities covered by RCW
36 70.155.020 through 70.155.080. This chapter does not otherwise
37 preempt political subdivisions from adopting ordinances regulating
38 the sale, purchase, use, or promotion of tobacco products not
39 inconsistent with chapter 507, Laws of 1993.

1 (2) This chapter does not preempt political subdivisions from
2 adopting ordinances regulating the sale, purchase, use, or promotion
3 of vapor products, provided such ordinances are consistent with the
4 provisions of this chapter and the administrative rules adopted by
5 the board, and do not have the effect of prohibiting the sale,
6 purchase, promotion, or reasonable use of vapor products. Any such
7 ordinances must not create regulatory provisions that are more
8 restrictive than those imposed on the commercial sale or personal use
9 of tobacco products, except that a city, county, or town may adopt an
10 ordinance prohibiting the sale of vapor products within five hundred
11 feet of a school.

12 NEW SECTION. Sec. 22. A new section is added to chapter 70.155
13 RCW to read as follows:

14 The board, in consultation with the department, may adopt rules
15 to implement and enforce the requirements of this chapter.

16 NEW SECTION. Sec. 23. A new section is added to chapter 70.155
17 RCW to read as follows:

18 (1) The licenses issuable by the board under this chapter are as
19 follows:

20 (a) A vapor product distributor's license; and

21 (b) A vapor product retailer's license.

22 (2) Application for the licenses must be made through the
23 business licensing system under chapter 19.02 RCW. The board may
24 adopt rules regarding the regulation of the licenses. The board may
25 refuse to issue any license under this chapter if the board has
26 reasonable cause to believe that the applicant has willfully withheld
27 information requested for the purpose of determining the eligibility
28 of the applicant to receive a license, or if the board has reasonable
29 cause to believe that information submitted in the application is
30 false or misleading or is not made in good faith. In addition, for
31 the purpose of reviewing an application for a distributor's license
32 or retailer's license and for considering the denial, suspension, or
33 revocation of any such license, the board may consider criminal
34 conduct of the applicant, including an administrative violation
35 history record with the board and a criminal history record
36 information check within the previous five years, in any state,
37 tribal, or federal jurisdiction in the United States, its
38 territories, or possessions, and the provisions of RCW 9.95.240 and

1 chapter 9.96A RCW do not apply to such cases. The board may, in its
2 discretion, issue or refuse to issue the distributor's license or
3 retailer's license, subject to the provisions of section 30 of this
4 act.

5 (3) No person may qualify for a distributor's license or a
6 retailer's license under this section without first undergoing a
7 criminal background check. The background check must be performed by
8 the board and must disclose any criminal conduct within the previous
9 five years in any state, tribal, or federal jurisdiction in the
10 United States, its territories, or possessions. If the applicant or
11 licensee also has a license issued under chapter 66.24, 82.24, or
12 82.26 RCW, the background check done under the authority of chapter
13 66.24, 82.24, or 82.26 RCW satisfies the requirements of this
14 subsection.

15 (4) Each license issued under this chapter expires on the
16 business license expiration date. The license must be continued
17 annually if the licensee has paid the required fee and complied with
18 all the provisions of this chapter and the rules of the board adopted
19 pursuant to this chapter.

20 (5) Each license and any other evidence of the license required
21 under this chapter must be exhibited in each place of business for
22 which it is issued and in the manner required for the display of a
23 business license.

24 (6) License issuances and renewals are subject to board authority
25 and the rules adopted under the board including, but not limited to,
26 rights of cities, towns, county legislative authorities, the public,
27 churches, schools, and public institutions that object to or prevent
28 issuance of licenses.

29 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.155
30 RCW to read as follows:

31 (1)(a) No person may engage in or conduct business as a
32 distributor or retailer in this state without a valid license issued
33 under this chapter, except as otherwise provided by law. Any person
34 who sells vapor products to persons other than ultimate consumers or
35 who meets the definition of "distributor" under this chapter must
36 obtain a distributor's license under this chapter. Any person who
37 sells vapor products to ultimate consumers must obtain a retailer's
38 license under this chapter.

1 (b) A violation of this subsection (1) is punishable as a class C
2 felony according to chapter 9A.20 RCW.

3 (2) No person engaged in or conducting business as a distributor
4 or retailer in this state may refuse to allow the enforcement
5 officers of the board, on demand, to make full inspection of any
6 place of business or vehicle where any of the vapor products
7 regulated under this chapter are sold, stored, transported, or
8 handled, or otherwise hinder or prevent such inspection. A person who
9 violates this subsection (2) is guilty of a gross misdemeanor.

10 (3) Any person licensed under this chapter as a distributor, and
11 any person licensed under this chapter as a retailer, may not operate
12 in any other capacity unless the additional appropriate license is
13 first secured, except as otherwise provided by law. A violation of
14 this subsection (3) is a misdemeanor.

15 (4) The penalties provided in this section are in addition to any
16 other penalties provided by law for violating the provisions of this
17 chapter or the rules adopted under this chapter.

18 NEW SECTION. **Sec. 25.** A new section is added to chapter 70.155
19 RCW to read as follows:

20 A fee of six hundred fifty dollars must accompany each vapor
21 product distributor's license application or license renewal
22 application under section 23 of this act. If a distributor sells or
23 intends to sell vapor products at two or more places of business,
24 whether established or temporary, a separate license with a license
25 fee of one hundred fifteen dollars is required for each additional
26 place of business.

27 NEW SECTION. **Sec. 26.** A new section is added to chapter 70.155
28 RCW to read as follows:

29 A fee of two hundred fifty dollars must accompany each vapor
30 product retailer's license application or license renewal application
31 under section 23 of this act. A separate license is required for each
32 separate location at which the retailer operates.

33 **Sec. 27.** RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each
34 amended to read as follows:

35 A fee of (~~ninety-three~~) two hundred fifty dollars must
36 accompany each retailer's license application or license renewal
37 application. A separate license is required for each separate

1 location at which the retailer operates. A fee of thirty additional
2 dollars for each vending machine must accompany each application or
3 renewal for a license issued to a retail dealer operating a cigarette
4 vending machine. An additional fee of ninety-three dollars (~~shall~~)
5 must accompany each application or renewal for a license issued to a
6 retail dealer operating a cigarette-making machine.

7 **Sec. 28.** RCW 82.26.170 and 2005 c 180 s 13 are each amended to
8 read as follows:

9 (1) A fee of (~~ninety-three dollars shall~~) two hundred fifty
10 dollars must accompany each retailer's license application or license
11 renewal application. A separate license is required for each separate
12 location at which the retailer operates.

13 (2) The fee imposed under subsection (1) of this section does not
14 apply to any person applying for a retailer's license or for renewal
15 of a retailer's license if the person has a valid retailer's license
16 under RCW 82.24.510 for the place of business associated with the
17 retailer's license application or renewal application.

18 NEW SECTION. **Sec. 29.** A new section is added to chapter 70.155
19 RCW to read as follows:

20 (1) Every vapor product retailer licensed under section 23 of
21 this act must procure itemized invoices of all vapor products
22 purchased. The invoices must show the seller's name and address, the
23 date of purchase, and all prices and discounts.

24 (2) The retailer must keep at each retail outlet copies of
25 complete, accurate, and legible invoices for that retail outlet or
26 place of business. All invoices required to be kept under this
27 section must be preserved for five years from the date of purchase.

28 (3) At any time during usual business hours the department,
29 board, or its duly authorized agents or employees may enter any
30 retail outlet without a search warrant, and inspect the premises for
31 invoices required to be kept under this section and the vapor
32 products contained in the retail outlet, to determine whether or not
33 all the provisions of this chapter are being fully complied with. If
34 the department, board, or any of its agents or employees are denied
35 free access or are hindered or interfered with in making the
36 inspection, the registration certificate issued under RCW 82.32.030
37 of the retailer at the premises is subject to revocation by the
38 department, and any licenses issued under this chapter or chapter

1 82.26 or 82.24 RCW are subject to suspension or revocation by the
2 board.

3 NEW SECTION. **Sec. 30.** A new section is added to chapter 70.155
4 RCW to read as follows:

5 (1) The board must enforce this chapter. The board may adopt,
6 amend, and repeal rules necessary to enforce this chapter.

7 (2) The department may adopt, amend, and repeal rules necessary
8 to administer this chapter. The board may revoke or suspend the
9 distributor's or retailer's license of any distributor or retailer of
10 vapor products in the state upon sufficient cause showing a violation
11 of this chapter or upon the failure of the licensee to comply with
12 any of the rules adopted under it.

13 (3) A license may not be suspended or revoked except upon notice
14 to the licensee and after a hearing as prescribed by the board. The
15 board, upon finding that the licensee has failed to comply with any
16 provision of this chapter or of any rule adopted under it, must, in
17 the case of the first offense, suspend the license or licenses of the
18 licensee for a period of not less than thirty consecutive business
19 days, and in the case of a second or further offense, suspend the
20 license or licenses for a period of not less than ninety consecutive
21 business days but not more than twelve months, and in the event the
22 board finds the licensee has been guilty of willful and persistent
23 violations, it may revoke the license or licenses.

24 (4) Any licenses issued under chapter 82.24 or 82.26 RCW to a
25 person whose license or licenses have been suspended or revoked under
26 this section must also be suspended or revoked during the period of
27 suspension or revocation under this section.

28 (5) Any person whose license or licenses have been revoked under
29 this section may reapply to the board at the expiration of one year
30 of the license or licenses. The license or licenses may be approved
31 by the board if it appears to the satisfaction of the board that the
32 licensee will comply with the provisions of this chapter and the
33 rules adopted under it.

34 (6) A person whose license has been suspended or revoked may not
35 sell vapor products, tobacco products, or cigarettes or permit vapor
36 products, tobacco products, or cigarettes to be sold during the
37 period of suspension or revocation on the premises occupied by the
38 person or upon other premises controlled by the person or others or
39 in any other manner or form.

1 (7) Any determination and order by the board, and any order of
2 suspension or revocation by the board of the license or licenses
3 issued under this chapter, or refusal to reinstate a license or
4 licenses after revocation is reviewable by an appeal to the superior
5 court of Thurston county. The superior court must review the order or
6 ruling of the board and may hear the matter de novo, having due
7 regard to the provisions of this chapter and the duties imposed upon
8 the board.

9 (8) If the board makes an initial decision to deny a license or
10 renewal, or suspend or revoke a license, the applicant may request a
11 hearing subject to the applicable provisions under Title 34 RCW.

12 NEW SECTION. **Sec. 31.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 32.** If any part of this act is found to be in
17 conflict with federal requirements that are a prescribed condition to
18 the allocation of federal funds to the state, the conflicting part of
19 this act is inoperative solely to the extent of the conflict and with
20 respect to the agencies directly affected, and this finding does not
21 affect the operation of the remainder of this act in its application
22 to the agencies concerned. Rules adopted under this act must meet
23 federal requirements that are a necessary condition to the receipt of
24 federal funds by the state.

25 NEW SECTION. **Sec. 33.** This act takes effect October 1, 2016.

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